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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,205	06/27/2003	Lorenzo Peruzzo	Q76357	5821

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WASHINGTON, DC 20037

EXAMINER

CRANE, DANIEL C

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8m

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/607,205	PERUZZO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Daniel C Crane	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/16/04 &amp; 7/10/03</u> . | 6) <input type="checkbox"/> Other: ____  |

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## **BASIS FOR REJECTIONS**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

## **REJECTION OF CLAIMS ON FORMAL MATTERS**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (1) A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by

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raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 1 and 29 recite the broad recitation of metal bars, and the claim also recites concrete reinforcement bars, which is the narrower statement of the range/limitation. (2) Use of terms such as “i.e., at least one gripper” (claim 1), “it”, “particularly” and “if necessary” render the subject matter vague because the terms are not clear definitions of the features of the claimed structure or method. (3) Reference is made to the installation being usable on a plurality of bars or a single bar. Also, reference is made to the planes of the bars. However, in the embodiment where one bar is being claimed, a plane does not exist. Accordingly, this embodiment is indefinite.

#### **REJECTION OF CLAIMS OVER PRIOR ART**

Claims 1-4 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Kidera (3,431,759). See Figures 3-6 and the first paragraph under the heading “Operation” where the bar/pipe 13 can be transferred by an installation 12 from a first position to a position within the bending machine. The installation 12 comprises a movable structure 15 movable transversely to the longitudinal extent of the pipe 13 with the movable structure 15 having a jaw means 27 rotatable about a horizontal axis 16a (Figure 2).

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Claims 1, 5, 6, 7, 9, 10, 14-16, 21, 26, 27, 29, 30, 31, 32, 34, 37, 38, 39, 41, 42, 44, 46 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Antoszewski (4,684,312). A recitation of the intended use (“...for processing metal bars”) of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Accordingly, as shown in Figures 1 and 2, the installation 11 is shown to have a movable structure movable along three axes with jaw means 19 mounted to the movable structure and rotatable about the axes, one axis (B axis) being oriented in the horizontal plane. Clearly, the apparatus shown by Antoszewski is constructed to be operable with the grippers orienting the material (bars) in orientations that are desired, i.e., with planes in horizontal and vertical positions.

Claims 1-27, 29-39, 41-46, 48-50, 52 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eng (WO 01/91936) in view of Antoszewski (4,684,312). Eng illustrates the claimed invention in that an installation 141 is provided for transferring bars from a first station to a second station where the second station is for bending bars. Eng does not specifically describe the operation of the installation. However, Antoszewski discloses a three-axis drive system and rotary mechanism for positioning the material at a particular position. It would have been obvious to the skilled artisan at the time of the invention to have modified Eng's bar

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processing device by using an installation as shown by Antoszewski so as to facilitate a multiple axis positioning of the bar while accurately locating the bar within the bending mechanism. The specific orientation of the plane would have been dictated by the orientation of the installation.

#### **INDICATION OF ALLOWABLE SUBJECT MATTER**

Claims 28, 40, 47 and 51 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### **PRIOR ART CITED BY EXAMINER**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

#### **RESPONSE BY APPLICANT(S)**

Applicant(s) response to be fully responsive and to provide for a clear record must specifically point out how the language of the claims patentably distinguishes them from the references, both those references applied in the objections and rejections and those references cited in view of the state of the art in accordance with 37 CFR 1.111 (a), (b) and (c).

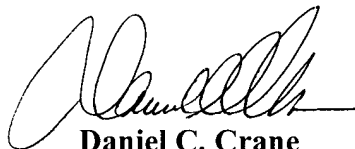
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## INQUIRIES

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is **(571) 272-4516**. The examiner's office hours are 6:30AM-5:00PM, Tuesday through Friday.

Documents related to the instant application may be submitted directly to Group 3700 by facsimile transmission at all times. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Group 3725 Facsimile Center number is **(703) 872-9306**.

DCCrane  
January 4, 2005



**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3725